THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION Nos.8516 and 14680 OF 2001

Date: 09.07.2007

W.P.No.8516 of 2001

Between:

A.Venkata Subba Reddy and others
…Petitioners

and

Smt. N.Laxmi Syamala Suguna
….Respondent

W.P.No.14680 of 2001

Between:

Smt. N.Lakshmi Syamala Suguna
….Petitioner

and

Ch.Vidyasagar
…Respondent

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION Nos.8516 and 14680 OF 2001

COMMON ORDER: (per BPR,J)

Since these two writ petitions arise out of a same order passed in L.G.C.No.92 of 1997, they are being taken up together for disposal.

Heard Shri O.Manoher Reddy, learned counsel appearing for the petitioners in W.P.No.8516 of 2001 and Shri Srinivas Emani, learned counsel appearing on behalf of the petitioner in W.P.No.14680 of 2001.

The brief facts, which gave rise to these writ petitions, are that the petitioners in W.P.No.8516 of 2001 are respondents 2 and 3 in L.G.C.No.92 of 1997, which has been filed under Section 8(1) of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') seeking eviction of them at the instance of the applicant, who is the petitioner in W.P.No.14680 of 2001. Though there is another party arrayed as respondent No.4 in the said proceedings, there is no challenge by him in respect of these proceedings. Since both the applicant and respondents 1 to 3 in the said L.G.C are aggrieved to the extent of findings, which have been given adverse, respectively, they seek to challenge the same in these applications seeking a writ of

Certiorari.

In the application, the case of the applicant is to the effect that the subject matter, which is to an extent of 572 square yards of land in plot No.16 in N.T.S.No.481/2 of Guntur Municipal town situated at Zakir Hussain Nagar, old Guntur is her property and she is the absolute owner having purchased the same under a registered sale deed, dated 09.08.1966, which is marked as Ex.A.2 before the Court below, from the vendors namely one Nidamarthi Samrajyamma and her daughter Venkata Subbamma. It is the further case of the applicant that the said vendors had purchased the said property in a Court auction sale held in E.P.No.77 of 1936 in O.S.No.1072 of 1929 on the file of the District Munsif at Guntur. Thus, since the date of purchase, she has been in absolute possession and enjoyment of it. However, having regard to the fact that the applicant being the resident of Vijayawada town, asked her close relative to look after the same. But after his death, his son was assisting. However, during her visit in 1988, it was found that the respondents, namely the petitioners in Writ Petition No.8516 of 2001, have erected thatched huts unauthorisedly. Therefore, the applicant had approached the Mandal Revenue Officer, Guntur for demarcation of the land, which was acceded to and in spite of such demarcation and demand made by the applicant, the respondents did not vacate the same. On further enquiry, it was revealed that the respondents, namely the petitioners in W.P.No.8516 of 2001, are claiming the said property based on the pattas alleged to have been issued by the authorities on 30.12.1992. Therefore, the applicant had approached the Joint Collector, Guntur complaining against the grant of patta by way of application, dated 08.02.1993, which is marked as Ex.A.5, claiming her exclusive proprietory rights and there being no right, title or interest over the property to anybody. After holding a regular enquiry, the said application was allowed and

ultimately, the alleged pattas granted in favour of the said respondents were set aside. In spite of the same and the applicant demanding them to vacate from the said land, they did not choose to do so. Hence, the present application.

Contesting the case of the applicant i.e. petitioner in W.P.No.14680 of 2001, the case of the respondents therein, namely the petitioners in W.P.No.8516 of 2001, is only to the effect that they were in possession and enjoyment for quite a long time, on the basis of which, pattas have been granted in their favour by the authorities on 30.12.1992. The alleged proceeding before the Joint Collector by the applicant is without any notice and they were not aware of the same. It is only during the present proceedings, they came to know about the said cancellation orders. Therefore, the said orders are not valid. Even otherwise, it was their case that having regard to the long, continuous, open possession and enjoyment in their title, right and interest, they have perfected their title by adverse possession. Hence, the application is liable to be dismissed.

Though respondent No.4 before the Land Grabbing Court was slightly on a different note and tried to rests on a permission given for construction of the house as a sort of rehabilitation and also to the effect that even in the proceedings and orders of the Joint Collector dated 12.08.1994, it was held that the land is in his occupation, it is only a Government poramboke land and it does not belong to the applicant. The said order has become final since it was not challenged by the applicant. Hence, he cannot be called as an encroacher.

With these and other allegations in detail from both sides, the Court below framed the following issues:

(i) Whether the applicant has title to the

application schedule property?

(ii) Whether the rival title set up by the respondents is true, valid and binding?

(iii) Whether the respondents in any event have perfected their title by way of adverse possession?

(iv) Whether the respondents are land grabbers?

(v) To what relief?

During the course of enquiry, the applicant examined P.W.1 and marked Exs.A.1 to A.7. On behalf of the respondents, R.Ws.1 to 3 were examined and Exs.B.1 to B.15 were marked. On appreciation thereof, the Special Court ultimately found that the applicant has got her own absolute proprietory right, title and interest over the property and respondents 1 to 3, namely the petitioners in W.P.No.8516 of 2001, are the land grabbers and, however, allowed the application only to that extent, while dismissing the application as against respondent No.4. Hence, it is not necessary to go into the case vis-à-vis respondent No.4.

Though detail submissions have been made from both sides by taking this Court through the entire evidence and material on record, where an attempt was sought to be made that findings on both the aspects one upholding the title of the applicant and another denying the plea of adverse possession is not a valid one, are not supported by any cogent evidence and they are being perverse. Hence, they are liable to be set aside.

Thus, on a consideration thereof, the questions, which arise for consideration, are as to whether the respondents are the land grabbers as per the provisions of the Act; whether the applicant is having absolute title and also whether the respondents therein have perfected

their title by adverse possession.

From the chequered events, which were led to the present proceedings, the undisputed facts are that O.S.No.1072 of 1929 on the file of the Principal District Munsif, Guntur, was filed by one Nidamarthi Samrajyamma and her daughter Venkata Subbamma for recovery of maintenance along with a charge over the said property and the same was decreed after contest on 09.05.1931 granting them maintenance and also charge over the property. Since the amount was not paid, E.P.No.770 of 1936 was filed, in which, the said property was sold in a Court auction held on 06.09.1937 and it was purchased by the decree holders themselves i.e. vendors of the applicant. The said sale was confirmed on 26.10.1937 and it was followed by duly issuance of sale certificate on 22.11.1937. These Court proceedings are quite evident from Ex.A.3, which is a copy of Suit Register issued from the said Court. Ex.A.4 is the sale certificate issued by the Court. Therefore, prima facie, it was held by the Court below that the vendors of the applicant are having title and secondly, having regard to the purchase made under Ex.A.2, dated 09.08.1968, the applicant is also having her own proprietory absolute right, title and interest.

However, having regard to the dispute raised in regard to the identity, the Special Court appointed an Assistant Director, Survey and Land Records, Guntur as Commissioner in I.A.No.995 of 1999 to localize the said and. After making local inspection, he filed a report along with the plan to the effect that the suit property is located in Survey No.481/A-2 and further, he also stated that old Survey No.481 was sub-divided into A.1, A.2, B.1, C.1 and C.2 as per records. Thus, there are doubts in regard to the identity, as such.

Coming to the claim or the case as set forth by the respondents i.e. the petitioners in W.P.No.8516 of 2001, their case was exclusively

rests on the alleged pattas issued in their favour under Exs.B.14 and B.15, by the authorities. They do not claim any other title or right as a proprietory or otherwise by themselves or through some of the persons. Admittedly, they treat the land as Government land and having regard to their possession, they obtained the said patta certificates. There is also no serious dispute with regard to the subsequent orders passed by the Joint Collector. On an application filed by the applicant aggrieved against the said grant of pattas, vide Ex.A.6, dated 12.08.1994, the Joint Collector has set aside the certificates holding that there is a private land belonging to the applicant. No doubt, an attempt has been made by the respondents to show that the proceedings before the Joint Collector are without any notice and opportunity and they are not aware of it. However, nothing has been brought forth to the notice of this Court as to whether any such lapse on the part of the parties.

Be that as it may, the fact remains that the alleged pattas were granted in favour of the respondents on 30.12.1992 and they were cancelled as per the orders, dated 12.08.1994, and even though they claim that it is only through the present proceedings, there is no regular attempt to assail the same or challenge in an appropriate manner. Having regard to the same, it can safely be taken note of that the pattas, as claimed by the respondents no longer hold good nor can be acted upon having regard to its cancellation. Further, in regard to the adverse possession, the respondents have filed certain documents like Exs.B.1 and B.2 – tax receipts, Ex.B.4 – bunch of tax receipts etc. On appreciation thereof, the Special Court observed that they do not constitute any valid piece of evidence apart from the fact that they themselves cannot be relied on especially in view of the fact that the earlier tax receipt – Ex.B.13 bears the date 20.06.1977 and there are errors and over writings therein. It was also pointed out that the said

tax receipt was issued in the name of one Syed Marufi Basha, in respect of whom nothing has been explained by the respondents and therefore, rejected the said alleged tax receipt holding that the respondents have failed to prove their possession.

The above findings are purely, on the face of it, are factual in nature and based upon the value of some documents with well supported reasons and other documents, which have been relied on by the applicant and that too the Court proceedings themselves could not possibly be attacked in successful manner and further, the very documents under which the pattas were claimed no longer accept and there is no attempt by the respondents to revive or reclaim the same or attack the correctness of the orders of the Joint Collector. As rightly observed by the Court below, there is no evidence to show that there is any possession as such on the part of the respondents, which can extend to beyond the period. Therefore, these and other aspects as quoted by the Court below cannot form part of any re-appreciation or reconsideration, much less, a judicial review by this Court in exercise of powers under Article 226 of the Constitution of India.

This Court has already held in **G.Rami Reddy v. State of Andhra Pradesh**[1] that in respect of proceedings, arising under the Act, exercise of judicial review cannot traverse beyond its own limitation nor re-appreciate or reconsider the evidence as if in the first appeal.

We are satisfied that the findings of the Special Court are perfectly valid and no perversity or any infirmity can be pointed out. Hence, the orders do not call for any interference by this Court. Except the above, nothing has been pointed out to show that the impugned order is vitiated.

In the circumstances, we do not find any merit in the writ petitions and they are accordingly dismissed.

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B.PRAKASH RAO, J

JULY, 2007.

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G.BHAVANI PRASAD, J

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[1] 2000(3) ALT 117